

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

Permanent Addition of USPS Connect Local Mail
Price Category to the Market Dominant Product
List

Docket No. MC2023-12

**COMMENTS OF THE
NATIONAL POSTAL POLICY COUNCIL**
(December 9, 2022)

The National Postal Policy Council (“NPPC”) respectfully submits these comments in response to the Notice and Order inviting comments on the Postal Service’s request to convert USPS Connect Local Mail to a permanent rate category.¹

USPS Connect Local Mail offers mailers a new option for delivering flats to local destinations. NPPC commends the Postal Service for testing innovative offerings, such as the category at issue in this proceeding, that have potential to increase the use and value of First-Class Mail specifically and Market Dominant mail generally. NPPC encourages the Postal Service to continue its efforts to devise market tests of experimental services, consult with mailers and other stakeholders, and, in a similar vein, to consider making permanent promotional discount offerings that have proven useful.

¹ Order No. 6326, Docket No. MC2023-12 (Nov. 14, 2022).

Because NPPC's members are generally national mailers, it is unlikely that its members will make other than minimal use of this new category. Despite not having a direct mailing interest in this particular proposal, in general NPPC supports making permanent innovations such as USPS Connect Local Mail for the reasons summarized above.

However, NPPC is submitting these comments to state its concern about one aspect of the proposed permanent category that it finds problematic as a matter of principle. That aspect is the apparent tying of eligibility to the use of the Postal Service's own payment systems and the disallowance of other means of payment, and more broadly the precedent it may set for a Market Dominant product.

The Postal Service's request asks the Commission to revise Section 1115.3 of the Mail Classification Schedule to read:

USPS Connect Local Mail – Next day or same day delivery within a service area available to mailers who use *specifically authorized payment methods* and, pursuant to a customer agreement on file with the Postal Service, either enter flats at a designated destination delivery unit (or other equivalent facility) or use carrier line-of-travel pickup.

(emphasis supplied). The concern arises from the “specifically authorized payment methods” and customer agreement language.

In the market test in Docket No. MT2022-1, the Postal Service required mailers to use either its own Click-N-Ship or an alternate API vehicle. See *Response of the United States Postal Service to Commission Information Request No. 1*, Q1(d) & Q3, Docket No. MT2022-1 (Nov. 30, 2021). In particular, the Postal Service stated that “Postage meters, PC Postage, Online Postage

ePostage, and other application programming interfaces” would not be accepted as payment options for the market test. *Response of the United States Postal Service to Chairman’s Information Request No. 3*, Q1, Docket No. MT2022-1 (Dec. 14, 2021). And NPPC understands that no other payment options were approved during the market test.

The Postal Service may have had plausible reasons for limiting payment options to Click-N-Ship or its approved APIs during the market test. For purposes of the market test, the Postal Service explained that limiting the payment option to Click-N-Ship would enable it to manage program eligibility and ensure that only mail entered for destinations covered by the test could be entered. *Response of the United States Postal Service to Chairman’s Information Request No. 3*, Q3.² Another rationale was to verify that mailers had registered to participate in the market test. *Id.*, Q2.

Presumably for these reasons, the Postal Service stated that postage for the market test “will, at least initially, be limited to using Click-N-Ship.” *Id.* That limitation continues to this day. The Commission considered this matter and reviewed the Postal Service’s representations in its order approving the market test. See Order No. 6080, Docket No. MT2022-1, at n.3 (Jan. 4, 2022).

Importantly, however, when seeking approval of the market test the Postal Service also stated: “If the market test is successful, the Postal Service would

² The Postal Service stated that it limited the available payment options for USPS Connect Local Mail because “[t]he market test is designed to help determine what requirements, standards or processes will be best suited for the product, and streamlining the available payment options, thereby limiting variables will help the Postal Service properly evaluate the test.” *Response to CHIR No. 3*, Q3.

consider broadening payment options and evaluating the need for a retail acceptance option.” *Response of the United States Postal Service to Chairman’s Information Request No. 3, Q4(c)*. The Postal Service now proposes to convert the test into a permanent offering.

But the Postal Service still does not currently plan to allow any payment method other than Click-N-Ship and its own API, which of course feeds into its own postage payment system. See *United States Postal Service Response to ChIR No. 1, Q5 (Dec. 5, 2022)*. Postal Service public communications regarding USPS Connect Local Mail have confirmed that there are no current plans to broaden payment options when the test becomes a permanent rate category.

Moreover, the proposed MCS language would enable the Postal Service to continue to limit payment options to its own postage offerings. It would do so through the “specifically authorized payment methods” language, which leaves great discretion in the Postal Service’s hands. Furthermore, the need for a “customer agreement” for a permanent offering is completely unexplained but could provide another way for the Postal Service to exclude alternative systems from providing postage payment for USPS Connect Local Mail by restrictive terms in the “customer agreements.”

This NPPC finds these problematic for two reasons.

First, the original rationale for limiting payment options appears no longer appropriate. While conditioning participation in a market test of an experimental service of limited geographic range on a singular payment mechanism may be justifiable as a means of managing the test, that justification no longer applies

when the test becomes a permanent market dominant offering. Presumably every delivery point will be eligible to receive USPS Connect Local Mail once the offering becomes permanent. Similarly, there is no apparent reason for requiring a "customer agreement" for a permanent Market Dominant offering that is not a negotiated services agreement.

Second, limiting payment options (and, for that matter, participation to prior agreements) to the Postal Service's own in-house service runs counter to Congress's decision in the Postal Accountability and Enhancement Act to prevent the Postal Service from extending its monopoly to upstream areas where competitive services are present. Congress has granted the Postal Service power to "prescribe, in accordance with this title, the amount of postage and the manner in which it is to be paid" (39 U.S.C. §404(a)(2)) and to "provide such other evidences of payment of postage and fees as may be necessary or desirable" (39 U.S.C. §404(a)(4)), but expressly subjected both of those provisions to 39 U.S.C. §404a. In Section 404a, Congress prohibited the Postal Service from establishing any rule having the effect of establishing the terms of competition unless it demonstrates that the rule does not "create an unfair competitive advantage for itself." 39 U.S.C. §404a(a)(1).

The proposed MCS language could enable the Postal Service to create and maintain an unfair competitive advantage for Click-N-Ship by continuing to exclude alternative postage payment systems from providing postage for USPS Connect Local Mail. That is not consistent with the law or with the need to encourage innovation, nor would it be in the interest of mailers.

The Commission should not set a precedent for allowing the Postal Service to give its own payment option a competitive advantage when mailers seek to provide a means to pay for a permanent service. Congress carefully constrained the Postal Service's ability to use its market power to limit, impede, or harm competition, and the Commission has a regulatory responsibility to effectuate that legislative policy. Moreover, NPPC is wary of any broader impact from this precedent since it sounds in Market Dominant mail. The Commission must remain vigilant to ensure that Market Dominant customers are not subjected to unfairness in the application of the statutory monopoly and should apply very strict scrutiny to the Postal Service's choice to limit payment options to its evident own advantage.

Accordingly, the National Postal Policy Council respectfully urges the Commission to ensure, as a condition of approval of the proposed USPS Connect Local Mail as a permanent offering, that the Postal Service will not foreclose mailers from using authorized alternative postage payment systems for this innovative service.

Respectfully submitted,

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